

East Longmeadow Planning Board
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since 1894

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Michael Carabetta, chair
Alessandro Meccia, vice-chair
Tyde Richards, clerk

George Kingston
Ralph Page
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Minutes of March 20, 2014

Present were: Vice Chair, Alessandro Meccia; Clerk, Tyde Richards, George Kingston and Ralph Page. Michael Carabetta was absent for personal reasons.

ANR – 215 Prospect Street – Sandra Maybury

Attorney Lawrence Levine presented the ANR for 215 Prospect Street showing a separation of one large lot to create two new lots. Both lots have the proper frontage on Prospect Street. Mr. Page asked Attorney Levine whether or not there was an additional structure on the property that was not shown on the plan. Attorney Levine stated that there was no relevance with regard to the ANR requirements.

Mr. Kingston stated that the plan shows walls, a pool shed and the driveway. Mr. Page stated that he believed the access to be real along the side of the property line. Attorney Levine asked to address the issue relating to a common driveway. Mr. Page stated that a common drive would be a zoning violation not pertaining to an ANR. Attorney Levine stated that he believed that the by-law does not state that it is not allowed. Mr. Page also stated that there was case law that states a common driveway needs to access a property from the frontage shown on the ANR plan. Mr. Page stated that it appears that the wall stops and allows driveway access from the side of the property rather than the front.

Mr. Page also stated that he was disappointed that the plans the Board has been receiving have gone downhill and do not show all the requirements on the plans when they are submitted.

Attorney Levine stated that was taken care of and easement requirements are not necessary if the property is held in fee simple common ownership. The owner would not have to show an easement unless and until the property is conveyed.

With no further discussion and upon motion duly made by George Kingston and seconded by Sandro Meccia to endorse the ANR, Mr. Page asked that a specific endorsement be applied to the plan to read:

"The above endorsement is not a determination of conformance with zoning regulations". Mr. Page further stated that the block on the plan only deals with lot area. Mr. Page continued stating that in the future this would matter. There is an existing structure on the parcel – that does not meet zoning. The proposed building that is going to be a single family house does not meet the setback requirements.

Attorney Levine stated that the structure has been existing for over six years and is an existing structure. He added that the Board should apply that endorsement to vacant land. Mr. Kingston stated that this was only to be endorsed as an ANR and he felt that dragging the zoning into it is not appropriate.

Mr. Page stated that the Planning Board can add anything they want to the plan so that future buyers would see that there was a possibility of zoning violations. He added that he simply wanted the statement to be applied to the existing plan. Mr. Richards stated that he was fine with it and did not see any problem with adding it. Mr. Page made a motion to same, Tyde Richards seconded and Attorney Levine asked to speak. He reiterated that the existing structure was going to be converted to a single-family home and that if such an endorsement was put on the plan, in the future, could cause difficulty for potential owners because the setbacks will show a violation. He continued that if the Board wanted to do this in the future, he did not feel it right to apply it to this particular plan. Attorney Levine stated that the structure setback was "averaged" as allowed by the by-laws. Mr. Page stated that the endorsement shown on the plan only dealt with lot area.

Mr. Kingston stated that he agreed with Attorney Levine – that there were no new issues and that adding something new strikes him as being onerous. Mr. Page stated that the "averaging" was not permitted for accessory structures, only residential structures. Attorney Levine stated that putting that endorsement on the plan after six years does no good – Mr. Page disagreed.

Mr. Kingston called for a vote on the additional endorsement requested by Mr. Page. - Mr. Richards stated that he did not think it a big deal – Mr. Kingston asked if he was going to vote or abstain – Mr. Richards voted no. The vote to add Mr. Page's additional endorsement was 1 to 3 so the motion failed.

The vote to endorse the ANR was then taken in a 4-0 vote for approval.

CHALMERS – LE BELCHER – discussion relating to Public Hearing

Attorney James Martin for Chalmers and Attorney James Shiels for LE Belcher were present.

Mr. Kingston asked the attorneys to explain where they were and where they were going. Attorney Martin stated that at the last meeting the Planning Board closed the public hearing and the chairman asked for another round table which was cancelled given that the public hearing was closed and no new information was allowed. Mr.

Kingston asked about the round table and Mr. Peirent's latest comments – Attorney Martin reiterated that the round table was cancelled. He added that as a result of the last comments their traffic engineers went out and provided new information for them to present to the round table, however, the Board closed the hearing and this information could not be submitted.

Mr. Kingston asked if the applicant had seen the new remarks from Mr. Peirent and Attorney Martin stated no that they had not as they could not be accepted as the public hearing had been closed. Mr. Kingston stated that he had seen the comments and that they could be sent to the applicant. Attorney Martin stated that was not the case – no new information can be reviewed by the applicants or the Board since the public hearing was closed. Mr. Kingston stated that based on the recommendations from Mr. Peirent, he was looking for significant changes. Mr. Page spoke up to state that no new information could be accepted and that the public hearing was closed. He explained to Mr. Kingston that he could not share new information from Mr. Peirent with the applicant and that he (Mr. Kingston) was bringing up a report that he was not allowed to use.

Mr. Kingston then stated what he wanted to do was to have another public hearing after the round table and additional information was received. Attorney Shiels stated that he wanted to re-open the existing hearing – Mr. Kingston stated that a new notice and abutter notification would be required. Attorney Shiels agreed. Ms. Macdonald stated that Mr. Carabetta had informed her that town counsel had stated that the hearing could not be re-opened, however, Mr. Carabetta was not present due to a family illness. Mr. Kingston was at that same meeting with Attorney Donahue. Attorney Shiels was disappointed that town counsel was not present and he did not agree with the fact that the hearing cannot be re-opened. He continued that there is local (Northampton) case law allowing public hearings to be re-opened. He also was concerned about statutory limitations of re-submitting an application for a Special Permit.

Attorney Martin also agreed with Attorney Shiels and stated that Mr. Kingston had admitted to and technically should not have looked at any new information since the public hearing was closed – they would not object to that and were willing to work their way around it. He continued by stating that research shows that the Board can re-open the public hearing. He also was concerned about estoppel if they had to re-file. Attorney Martin stated that the Board should have left the “record” open and then new information could be received and reviewed, however, by closing the hearing no new information could be considered. Mr. Kingston stated that he understood that the Board needs to look at new information.

He also stated that the public needed to hear the new information. He also stated that denial was suggested by town counsel – deny on insufficient information – which is a non-prejudicial decision.

Attorney Martin stated that thousands of dollars had been spent by his client and saying insufficient does his client a great dis-service. Mr. Kingston did not agree - - the fact

that more information was asked for that was not presented – he has done this many times on conservation - - he is more familiar with conservation law than Planning law.

Attorney Shiels stated that Planning Law and Special Permits are substantially different from Conservation and they would be estopped from re-filing unless there is a change in the vote and there are material changes in the conditions. He also stated that they intended to submit evidence that was part of that hearing, but then that hearing was closed.

Neither counsel agreed that the plan be denied rather the public hearing re-opened. Attorney Martin stated if the vote to amend the motion to close the public comment and to keep the public hearing open, noticing in the East Longmeadow Reminder and the abutters get their notice and that they schedule a round table (which the public does not get notice of anyway) – this can be held within the next couple of weeks – by that time we will have submitted all the information and it will all be done legally. Attorney Martin told Mr. Kingston that he had a concern about someone claiming that they are estopped for two years because they (the Planning Board denied the plan) - - it may work in conservation, but not in Planning & Zoning – this is fraught with peril.

Attorney Martin stated that they would challenge the reason for “insufficient information”. He added that he felt that they would be open to re-opening the hearing. Ms. Macdonald called and spoke with Michael Carabetta who agreed to vote to re-open the hearing – amend the motion to close the public comment that the record to remain open and schedule a hearing thereafter. A legal notice of the continuation of the hearing and notification of the abutters - - a regular legal notice. This will protect the town too seeing that Mr. Kingston accepted and reviewed additional information, albeit internally, after the hearing was closed.

Mr. Page stated that a new plan also had to be submitted. With no further discussion, a Motion was made to rescind the decision of March 11, 2014 to close the public hearing and re-open the public hearing for the purpose of receiving new information and public comment with regard to the application for Special Permit and Site Plan Review of Chalmers, LLC, and to be continued to April 15, 2014 at 6:00 p.m. at the public library. Motion duly made by Ralph Page and seconded by Tyde Richards, the Board voted 4 – 0 in favor of rescinding the decision to close the public hearing.

A motion was then made to go into Executive Session only to come back to close, but there was no second. Mr. Richards stated that he understood that Mr. Carabetta wanted the entire Board present for this discussion. Mr. Page stated that he felt that it would be better if the Board waited for a meeting at which all five members were present. Mr. Kingston then determined that the pre-conditions for dealing with the matter to be considered in Executive Session had not been met. The Board agreed to postpone the Executive Session to March 25. The Board voted 4-0 to close the meeting at 7:45 p.m.

For the Board

Tyde Richards, Clerk